Gary E. Calkins and Anna Rosa Calkins, d/b/a Indio Grocery Outlet *and* United Food and Commercial Workers Union, Local 1167, United Food and Commercial Workers International Union, AFL–CIO–CLC. Cases 21–CA–30424 and 21–CA–30614

June 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On charges filed by the Union on December 15, 1994 in Case 21–CA–30424, and on April 5, 1995, in Case 21–CA–30614, the General Counsel of the National Labor Relations Board by the Regional Director for Region 21 issued an order consolidating cases, consolidated amended complaint, and amended notice of hearing on April 25, 1995. The complaint in essence alleged that the Respondent violated Section 8(a)(1) of the Act by threatening to have union representatives arrested if they did not cease picketing and distributing union-related literature on the Respondent's premises; by requesting police officers to arrest such representatives for engaging in these activities; and by attempting to cause and/or causing police officers to arrest Union Representative Joseph Duffle because he refused to cease picketing and distributing union-related literature on the Respondent's premises. On May 10, 1995, the Respondent filed an answer admitting in part and denying in part the allegations of the complaint, and denying that it had violated the Act.

On July 24, 1995, the General Counsel, the Respondent, and the Union filed with the Board a stipulation of facts. The parties agreed that the charges, the consolidated amended complaint, the answer to the consolidated amended complaint, the order postponing hearing indefinitely, and the stipulation of facts with attached exhibits constitute the entire record in this case. The parties further stipulated that they waived a hearing and the making of findings of fact and conclusions of law, and the issuance of a decision by an administrative law judge.

On September 18, 1995, the Board issued an Order approving the stipulation of facts and transferring the proceeding to the Board. The General Counsel, the Respondent, and the Union subsequently filed briefs.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Gary E. Calkins and Anna Rosa Calkins have been the sole proprietors and operators of a retail grocery store located in Indio, California, known as the Indio Grocery Outlet (the Respondent). During the 12-month period ending April 21, 1995, the Respondent derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $50,000 from other enterprises located within the State of California, each of which other enterprises had received these goods directly from points located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We further find that the Union, United Food and Commercial Workers Union, Local 1167, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The Respondent's retail grocery store occupies a 20,500-square-foot building.[1] The building, which is open to the general public, is freestanding and is not part of a shopping mall. The lot is bounded by Highway 111 on the south, and two surface streets: Salton Street on the west, and Fowler Street on the east. There is a parking lot on the west and south sides of the store, which is for the use of customers and employees of the Respondent. There are two entrances to the parking lot, and it is surrounded on three sides by a public sidewalk, with an approximately 140-foot by 62-foot grass lot on the east side which separates a portion of the parking lot from the public sidewalk. There are two entrances into the store, and a walkway runs along the front of the store. There is a factual dispute as to whether there were signs prohibiting "trespassers, solicitors, or distribution of literature by nonemployees" posted near the two entrances prior to the summer of 1995.[2] The parties stipulated, however, that persons other than employees and customers of the store are excluded from the store's premises.

On September 30, 1994, 11 picketers representing the Union gathered at the Respondent's parking lot.[3] When asked to leave the parking lot, the picketers relocated to the public sidewalk.

[1] The Respondent leases these premises from Canned Foods, Inc., the lessor of the property on which the Respondent is located. The real property and building are owned by Read Properties. The Respondent's lease was modified in July 1995, after the operant facts in the instant case occurred, to include the following provision:

> Operator shall maintain physical control of the Store and be responsible for its safe and efficient operation during the term of this Agreement. Operator shall have the right and the duty to exclude from the Store trespassers, solicitors, vagrants and other unauthorized persons or objects. . . .

[2] Resolution of this factual dispute is not necessary in light of our analysis of this case, discussed below.

[3] The Respondent's employees are not represented by the Union or by any other union. The employees did not participate in the Union's picketing or handbilling at issue here.

On December 13, 1994, approximately eight or nine union picketers engaged in peaceful picketing and handbilling at the Respondent's store. There was one picketer stationed by each of the two entrances to the store, and some picketers were walking around the parking lot in front of the store. The remaining picketers were on the public sidewalk. The picketers carried signs which measured 14 inches in width and 23 inches in length, and which read in English and Spanish:

PLEASE
DO NOT SHOP
GROCERY OUTLET
UFCW LOCALS #1167

The picketers also handed out leaflets to the Respondent's customers and employees, which stated

DON'T SHOP
CANNED FOODS
GROCERY OUTLET
INDIO
SUPPORT YOUR UNION NEIGHBORS

and requested patrons to shop at certain nearby union stores.

That same day, Gary Calkins asked the picketers to leave the parking lot and the walkway in front of the store. The picketers refused to do so. Approximately 10 to 15 minutes later, Calkins and three of the Respondent's employees began a counterleafletting campaign outside the store, with handbills that were signed by the employees and stated that none of the people picketing were the Respondent's employees, that the employees were happily employed and were receiving competitive wages and benefits, that it was a family owned and operated store, and that the employees were inside the store ready to serve the customers.

Later that day, Calkins summoned the police and asked them to remove the picketers from the walkway in front of the store and from the parking lot. The police officers declined to do so, and Calkins asked the police about making citizen's arrests of the picketers.[4] The police officers told Calkins they would look into the matter. Calkins concluded the conversation by stating that if the picketers did not leave his property, he would request the police to make a citizen's arrest. Thereafter, the picketers left the Respondent's property and relocated to the public sidewalks. Calkins told the picketers that he would request the police to arrest them if they returned to the store's premises. Also, after the picketing had ended that day, the Union was informed by the local police department that Calkins had requested that the police make citizen's arrests of picketers who came on to his property.

On March 29, 1995, union picketers engaged in peaceful picketing and handbilling at the Respondent's premises. There were approximately the same number of picketers engaging in the same activities as on December 13, 1994, plus two union employees taking photographs. Calkins asked the picketers to leave the store premises, and advised picketer Duffle that he had called the police and that if the police did not arrive in 10 minutes, he would place the picketers who were still on the premises under citizen's arrest.

When the police arrived, all of the picketers except Duffle moved to the public sidewalk areas. A police officer told Duffle that if he did not leave voluntarily, Calkins could request the officer to place Duffle under citizen's arrest. Duffle still refused to move. Calkins then requested that Duffle be placed under citizen's arrest, which the police officer did by issuing a citation against Duffle which charged him with trespassing.[5]

Since March 29, 1995, the union picketers have confined their activities to the public sidewalks surrounding the Respondent's parking lot.

B. *Issue*

The issue is whether the Respondent violated Section 8(a)(1) of the Act by threatening to have union representatives arrested if they did not cease picketing and distributing union-related literature on the Respondent's premises on December 13, 1994, and March 29, 1995; by requesting police officers to arrest such representatives for engaging in these activities on December 13, 1994; and by attempting to cause and/or causing police officers to arrest Union Representative Duffle because he refused to cease picketing and distributing union-related literature on the Respondent's premises on March 29, 1995.

C. *Contentions of the Parties*

The General Counsel, noting that it is state law that determines an employer's property interests, contends that the Board has acknowledged that under California law there is no property right that would entitle an employer like the Respondent to exclude nonemployee union representatives from conducting peaceful picketing and handbilling, citing *Payless Drug Stores*, 311 NLRB 678 (1993), enf. denied on other grounds by unpublished decision (9th Cir. May 8, 1995), and *Bristol Farms*, 311 NLRB 437 (1993). The General Counsel notes that in *Robins v. Pruneyard Shopping Center*, 153 Cal. Rptr. 854, 592 P.2d 341 (Cal. 1979), affd. 447 U.S. 74 (1980), the California Supreme Court found that a large shopping center had taken on the

[4] We note that the parties have not stipulated or otherwise explained in the record or in their briefs what they mean by the term "citizen's arrest."

[5] On July 13, 1995, the General Counsel was advised by the Riverside County District Attorney that the case against Duffle had been dropped.

character of a "traditional public forum," and that expressive activities at the shopping center were protected by article I, section 2 of the California Constitution.[6] The General Counsel further notes that the California Supreme Court had applied the *Pruneyard* rationale to a freestanding supermarket in an earlier case, *In re Lane*, 79 Cal. Rptr. 729, 457 P.2d 561 (Cal. 1969). The General Counsel contends that the Respondent is not a "modest retail establishment," which the California Supreme Court in Pruneyard distinguished from a large shopping center and to which it would not apply the state constitutional protection, but rather is more akin to a large shopping center given its size of over 20,000 square feet of floor area on a 2.4-acre lot.

Alternatively, the General Counsel argues that there is a statutory basis in California state law for protecting the Union's activities on the Respondent's property in addition to the state constitutional basis defined in *Pruneyard*, above. The General Counsel notes that section 602(n) of the California Penal Code, the criminal trespass section under which Duffle was cited, has been held by the California Supreme Court not to apply to "lawful" union activities on private property, citing *In re Zerbe*, 36 Cal. Rptr. 286, 388 P.2d 182 (1964). The General Counsel thus asserts that under California law, the Respondent has no property interest enabling it to arrest, or threaten to arrest, the picketers, apart from whatever civil remedies the Respondent might have.

The Charging Party argues that because the Respondent is not the owner of the property, but rather appears to be a lessee, it therefore cannot claim a bright of ownership and has no property right entitling it to exclude the union agents. The Charging Party also cites the California Supreme Court's finding in *In re Lane*, above, claiming that the court held that handbilling on a private sidewalk outside an entrance to a privately owned store was permissible, especially where such action was protected as free speech. The Charging Party also states that there is no evidence in the instant case that the picketers and handbillers interfered with the ingress and/or egress of would-be customers. The Charging Party further asserts that the Union's activity here was protected conduct under Section 7 of the Act.

The Respondent argues that under California law, it, as a tenant with an exclusive right to operate the store, has a right to exclude uninvited persons from the premises. In this regard, the Respondent contends that one need not be an owner of the property to bring an action for trespass, but need only be in actual possession of the property. The Respondent also asserts that the instant case does not present a "disparate treatment" issue, noting that the picketers and handbillers here were not employees of the Respondent and that it is undisputed that all persons other than customers and employees are excluded from the Respondent's premises.

The Respondent further argues that *Pruneyard*, above, which involved a large shopping complex that the court analogized to a "town center," does not apply in the instant case because *Pruneyard* specifically excluded from its reach "a modest retail establishment," which the Respondent contends its stand-alone store is.[7] The Respondent further argues that unlike the mall in *Pruneyard*, it has not opened its small private parking lot to the general public but rather has limited it to use by the Respondent's employees and customers; and thus, under California law, the parking lot is not sufficiently dedicated to public use to entitle the picketers to assemble in it, citing *Allred v. Shawley*, 284 Cal. Rptr. 140 (Cal. App. 4 Dist. 1991).

The Respondent also contends that *In re Lane*, above, is inapplicable to the instant case for two reasons. First, the Respondent states that *Lane* did not address what rights, if any, a union member handbilling on private property had under California state law, but rather relied on the then-controlling United States Supreme Court precedent, notably in *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968), holding First Amendment rights applicable to such a situation. The Respondent further notes that *Logan Valley* was subsequently overruled in *Hudgens v. NLRB*, 424 U.S. 507 (1976). The Respondent thus argues that *Lane* cannot be relied on as support for the argument that the union picketers had some right under California law to enter onto the Respondent's property. Second, the Respondent contends that *Lane* is factually distinguishable from the instant case, because in *Lane*, unlike here, the public sidewalks were located so far away from the intended recipients of the demonstrators' messages that the messages could not be conveyed effectively from the public sidewalks.

The Respondent alternatively contends that even if *Pruneyard* allowed the picketers access to the Respondent's premises, the California courts have acknowledged the rights of property owners to restrict activities that interfere with normal business operations, as well as the rights of property owners to control ingress and egress, litter, and traffic hazards on their premises. The Respondent contends that in the instant case the picketers accosted customers to pass out handbills, and that the carrying of picket signs is itself

[6] Art. 1, sec. 2 of the California Constitution provides:

> Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

[7] The Respondent contrasts its allegedly small, stand-alone store with the 21-acre, multistore shopping, dining, and entertainment complex in Pruneyard.

disruptive and potentially threatening and/or coercive conduct. The Respondent also states that *Savage v. Trammel Crow Co.*, 273 Cal. Rptr. 302, 307–308 (Cal. App. 4 Dist. 1990), indicated that a ban on leafletting in a shopping center's parking lot was appropriate because it was content-neutral and was narrowly tailored to meet the shopping center's interest in controlling litter and traffic, and because the leafletters could leaflet on the shopping center's sidewalks. The Respondent argues that it therefore did not violate Section 8(a)(1) of the Act by asking the picketers to leave the parking lot and entrance way and to relocate to the nearby public sidewalk.

The Respondent also argues that because the picketing in this case was conducted by nonemployees and was directed to the Respondent's customers rather than to the Respondent's employees, the picketer's conduct was not protected by the Act because it was not aimed at organizing the employees or otherwise protecting their Section 7 rights, citing *Sparks Nugget, Inc. v. NLRB*, 968 F.2d 991, 997 (9th Cir. 1992). Finally, the Respondent notes that the United States Supreme Court, in *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 538 (1992), held that nonemployees may not trespass on an employer's property to conduct union organizing activities unless the union can show that the employees are beyond the reach of other reasonable means to communicate with them, and that the Board has applied the "inaccessibility" rule of *Lechmere* to "area standards" and "consumer boycott" picketing by unions.[8] The Respondent asserts that the General Counsel has not and cannot meet his burden of showing that there are no reasonable alternative means of communicating the Union's message to the Respondent's customers without trespassing on the Respondent's property. Specifically, the Respondent contends that the General Counsel has not shown that the Union is unable to communicate with the Respondent's customers through picketing on the public sidewalk surrounding the Respondent's premises, and that the General Counsel has not presented any evidence regarding the use of the mass media to publicize the Union's message.

D. *Discussion*

The Board has stated that "in cases in which the exercise of Section 7 rights by nonemployee union representatives is assertedly in conflict with a respondent's private property rights, there is a threshold burden on the respondent to establish that it had, at the time it expelled the union representatives, an interest which *entitled* it to exclude individuals from the property [emphasis in original]." *Food for Less*, 318 NLRB 646, 649 (1995), affd. in relevant part 153 LRRM 2291 (8th Cir. 1996). See, e.g., *Payless Drug Stores*, 311 NLRB 678 (1993), enf. denied on other grounds by unpublished decision (9th Cir. May 8, 1995); and *Bristol Farms*, 311 NLRB 437, 438 (1993). "In the absence of such a showing there is in fact no conflict between competing rights requiring an analysis and an accomodation under *Lechmere*, supra." *Food for Less*, above at 649. In determining whether an adequate property interest has been shown, we look to the law that created and defined the Respondent's property interest, which is state, rather than Federal, law. *Bristol Farms*, above at 438.

To determine the nature and extent of the Respondent's property interest in the parking lot and the walkway in front of its store, we must, therefore, look to the law of the State of California, the state where the Respondent's store is located. Under California law, neither a shopping center nor its individual tenants have a right to prohibit individuals from handbilling or picketing on the shopping center premises, even though the shopping center is privately owned. *Bristol Farms*, above at 439. In *Robins v. Pruneyard Shopping Center*, 153 Cal. Rptr. 854, 592 P.2d 341 (Cal. 1979), affd. 447 U.S. 74 (1980), which involved high school students soliciting signatures for a petition opposing a United Nations resolution, the California Supreme Court concluded that a shopping center's property right was limited by the free speech and petition sections of the California constitution.[9] In so holding, the court relied, inter alia, on prior California Supreme Court decisions which found that a shopping center lacked the right to enjoin as trespass a union's picketing on the privately owned sidewalk in front of a bakery within the shopping center, *Schwartz-Torrance Investment Corp. v. Bakery Workers Local 31*, 40 Cal. Rptr. 233, 394 P.2d 921 (Cal. 1964), and that a local trespass ordinance could not prohibit a union officer from distributing handbills on a privately owned sidewalk outside a doorway to a supermarket, *In re Lane*, 79 Cal. Rptr. 729, above. *Bristol Farms*, above, at 439.

In *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, above, the Supreme Court upheld the California Supreme Court's ruling against constitutional attack. Specifically, it held that California had the "right to grant more expansive rights of free speech and petition than conferred by the Federal Constitution," i.e., that this did not violate the Federal constitutional protection against a taking of property without due process and just compensation. 447 U.S. at 81–85. Subsequently, a California appellate court extended *Pruneyard* to per-

[8] *Leslie Homes, Inc.*, 316 NLRB 123 (1995); *Loehmann's Plaza*, 316 NLRB 109 (1995).

[9] The California Supreme Court in *Pruneyard* found that the shopping center could, however, adopt reasonable time, place, and manner rules concerning the exercise of free speech in the shopping center.

mit the distribution of union handbills at a shopping center.[10] *Bristol Farms*, above at 439.

Here, as in *Bristol Farms* and *Payless Drug Stores*, we find that under California law the Respondent did not have a right to exclude the union agents from the walkway in front of its store and from its parking lot, and that it would not have possessed such a right even if it had possessed complete ownership of the walkway and parking lot.[11] Thus, the union agents engaging in Section 7 activities[12] on that walkway and parking lot did not interfere with any property right of the Respondent.[13] The law concerning conflicts between Section 7 rights and property rights articulated in *Lechmere* is, therefore, not applicable to this case.

In so finding, we reject the Respondent's argument that the Respondent's store was the sort of "modest retail establishment" which the court in *Pruneyard*, above, excluded from its reach.[14] Rather, we find the instant case analogous to *In re Lane*, above, which involved a 24,000-square-foot stand-alone grocery store that was not part of a shopping center. Here, the Respondent's grocery store is 20,500 square feet, and is similarly a stand-alone store.[15] Further, subsequent California cases have cited *Lane* approvingly,[16] with one case noting specifically that *Lane* has not been overruled or eroded in later cases. *Sears, Roebuck & Co.*, 158 Cal. Rptr. 370, 378, 599 P.2d 676 (1979).[17] As the court in *Sears* concluded, under California state law, "[t]he sidewalk outside a retail store has become the traditional and accepted place where unions may, by peaceful picketing, present to the public their views respecting a labor dispute with that store. . . .In such context the location of the store whether it is on the main street of the downtown section . . . in a suburban shopping center or in a parking lot, does not make any difference." *Sears*, above at 381.

Thus, under the settled precedent discussed above, we find that the Respondent violated Section 8(a)(1) of the Act by threatening to have union representatives arrested if they did not cease picketing and distributing union-related literature on the Respondent's premises on December 13, 1994, and March 29, 1995; by requesting police officers to arrest such representatives for engaging in these activities on December 13, 1994; and by attempting to cause and/or causing police officers to arrest Union Representative Duffle because he refused to cease picketing and distributing union-related literature on the Respondent's premises on March 29, 1995.

CONCLUSION OF LAW

By threatening to have representatives of United Food and Commercial Workers Union, Local 1167, United Food and Commercial Workers International Union, AFL–CIO–CLC, arrested if they did not cease

[10] *Northern California Newspaper Organizing Committee v. Solano Associates*, 239 Cal. Rptr. 227 (Cal. App. 1 Dist. 1987).

[11] In light of this conclusion, we find it unnecessary to pass on the exact nature of the Respondent's property interest under the terms of its lease. We also find it unnecessary to pass on the General Counsel's alternative argument concerning California's criminal trespass laws.

[12] Contrary to the Respondent's contention that the union agents' picketing and handbilling here was not protected by the Act, we find that their conduct was clearly protected under the second proviso to Sec. 8(b)(7)(C), which concerns picketing or other publicity for the purpose of truthfully advising the public that an employer does not employ members of, or have a contract with, a labor organization. The right of union representatives to engage in this type of activity is well established. *Bristol Farms*, above at 438 fn. 8, and cases cited there.

[13] We note that there is no evidence that the Respondent had adopted any reasonable time, place, or manner rules concerning picketing or handbilling in the parking lot and on the walkway in front of its store, assuming arguendo that it had an adequate property interest to do so. *Bristol Farms*, above at 439 fn. 10. Further, despite the Respondent's contention that the picketers accosted customers to pass out leaflets and that the act of picketing is itself disruptive and potentially threatening conduct, and its intimation that the leafletting was causing a litter problem, we note that the Respondent presented no evidence in support of these contentions and that in fact the parties' stipulation of facts refers to the picketing and handbilling as "peaceful." Thus, we find that the Union's picketing and handbilling did not interfere with the Respondent's operation of its business or with its customers' ingress to and egress from its store.

[14] We also reject the Respondent's contention that the parking lot surrounding the Respondent's store is not open to the general public but is limited to use by the Respondent's employees and customers. As the California Supreme Court stated in *Lane* regarding the sidewalk surrounding the store in that case, "Certainly, this sidewalk is not private in the sense of not being open to the public. The public is openly invited to use it in gaining access to the store and in leaving the premises." *Lane*, above at 733.

[15] We also reject the Respondent's contention that *Lane* is distinguishable from the instant case because in *Lane*, unlike here, the public sidewalks were located so far away from the intended recipients of the union's message that the message could not be conveyed effectively from the public sidewalks. In *Lane*, the court noted that the public sidewalk was located some 150 to 280 feet from the store. In the instant case, the public sidewalk that is parallel to the front of the store is 230 feet from the store; the public sidewalk that is parallel to the sides of the store is, at its closest distance, approximately 100 feet from the store's entrance. We view this as a sufficiently far distance to make the instant case indistinguishable from Lane in this respect.

[16] See, e.g., *Family Planning Alternatives v. Pruner*, 15 Cal. Rptr.2d 316, 322 (Cal. App. 6 Dist. 1992); *Allred v. Shawley*, 284 Cal. Rptr. 140, 146, 148 (Cal. App. 4 Dist. 1991).

[17] In this regard, the California Supreme Court in *Sears*, above, noted that *Lane* relied both on Federal free speech guarantees as set out in *Food Employees v. Logan Plaza (Logan Valley)*, 391 U.S. 308 (1968), and on state labor law as established in *Schwartz-Torrance*, above. Thus, although the Supreme Court in *Hudgens v. NLRB*, 424 U.S. 507 (1975), overruled *Logan Valley* and held that the First Amendment does not protect picketing on shopping center property, state labor law may still grant unions rights to conduct activities on the employer's property regardless of any claim of Federal constitutional right. *Sears*, above at 376–378. Thus, we reject the Respondent's contention that *Lane* can no longer be relied on to support the rights of union picketers to picket on an employer's property because *Hudgens* overruled *Logan Valley*, and its contention that *Lane* relied only on the First Amendment and did not address California state law in its holding.

picketing and distributing union-related literature on the Respondent's premises on December 13, 1994, and March 29, 1995; by requesting police officers to arrest such representatives for engaging in these activities on December 13, 1994; and by attempting to cause and/or causing police officers to arrest Union Representative Duffle because he refused to cease picketing and distributing union-related literature on the Respondent's premises on March 29, 1995, the Respondent has violated Section 8(a)(1) of the Act.

THE REMEDY

Having found that the Respondent violated Section 8(a)(1) of the Act, we shall order it to cease and desist and to take certain affirmative action that will effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Gary E. Calkins and Anna Rosa Calkins, d/b/a Indio Grocery Outlet, Indio, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to have representatives of United Food and Commercial Workers Union, Local 1167, United Food and Commercial Workers International Union, AFL–CIO–CLC, arrested if they do not cease picketing and distributing union-related literature on the Respondent's premises; requesting and attempting to cause and/or causing police officers to arrest such representatives for engaging in such activity, as long as that activity is conducted by a reasonable number of persons and does not unduly interfere with the normal use of facilities or operation of businesses not associated with the Respondent's store.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent not already done, immediately withdraw any and all criminal trespass proceedings against Joseph Duffle, and inform him in writing that this has been done.

(b) Within 14 days after service by the Region, post at its store in Indio, California, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 15, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to have representatives of United Food and Commercial Workers Union, Local 1167, United Food and Commercial Workers International Union, AFL–CIO–CLC, arrested if they do not cease picketing and distributing union-related literature on our premises; request, and attempt to cause and/or cause police officers to arrest such representatives for engaging in such activity, as long as that activity is conducted by a reasonable number of persons and does not unduly interfere with the normal use of facilities or operation of businesses not associated with our store.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, to the extent not already done, immediately withdraw any and all criminal trespass charges against Joseph Duffle, and inform him in writing that this has been done.

INDIO GROCERY OUTLET